# SCHOOL *of* LAW

THE
UNIVERSITY
OF
GEORGIA

**The 103rd John A. Sibley Lecture -**
**"The Concept and the Rule of Law"**

**by**

**Jeremy Waldron**
***University Professor***
**New York University School of Law**

**Hatton Lovejoy Courtroom, School of Law**
**March 5, 2008**
**3:30 p.m.**

# Jeremy Waldron

After graduating from the University of Otago in New Zealand with degrees in philosophy and law in 1978, Waldron earned his doctorate in legal philosophy from Oxford University, where he taught as a Darby Fellow of Lincoln College. He has served as a professor at the University of Edinburgh, the University of California at Berkeley, Princeton University and Columbia University. In 2006, he joined the New York University School of Law as University Professor.

A frequent lecturer all over the globe, Waldron has written and published extensively in the areas of jurisprudence and political theory, and several of his works on theories of rights, constitutionalism, democracy, property, torture and homelessness are well known, as is his work in historical political theory. Waldron is the author of numerous books and has written more than 100 articles and essays in legal and political philosophy. His work has been published in the *Yale Law Journal,* the *Harvard Law Review,* the *Columbia Law Review* and the *Georgetown Law Journal.*

# The 103rd John A. Sibley Lecture

*Welcome to Sibley Lecture*

**Paul M. Kurtz**
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*School of Law*

*Introduction of Sibley Lecturer*

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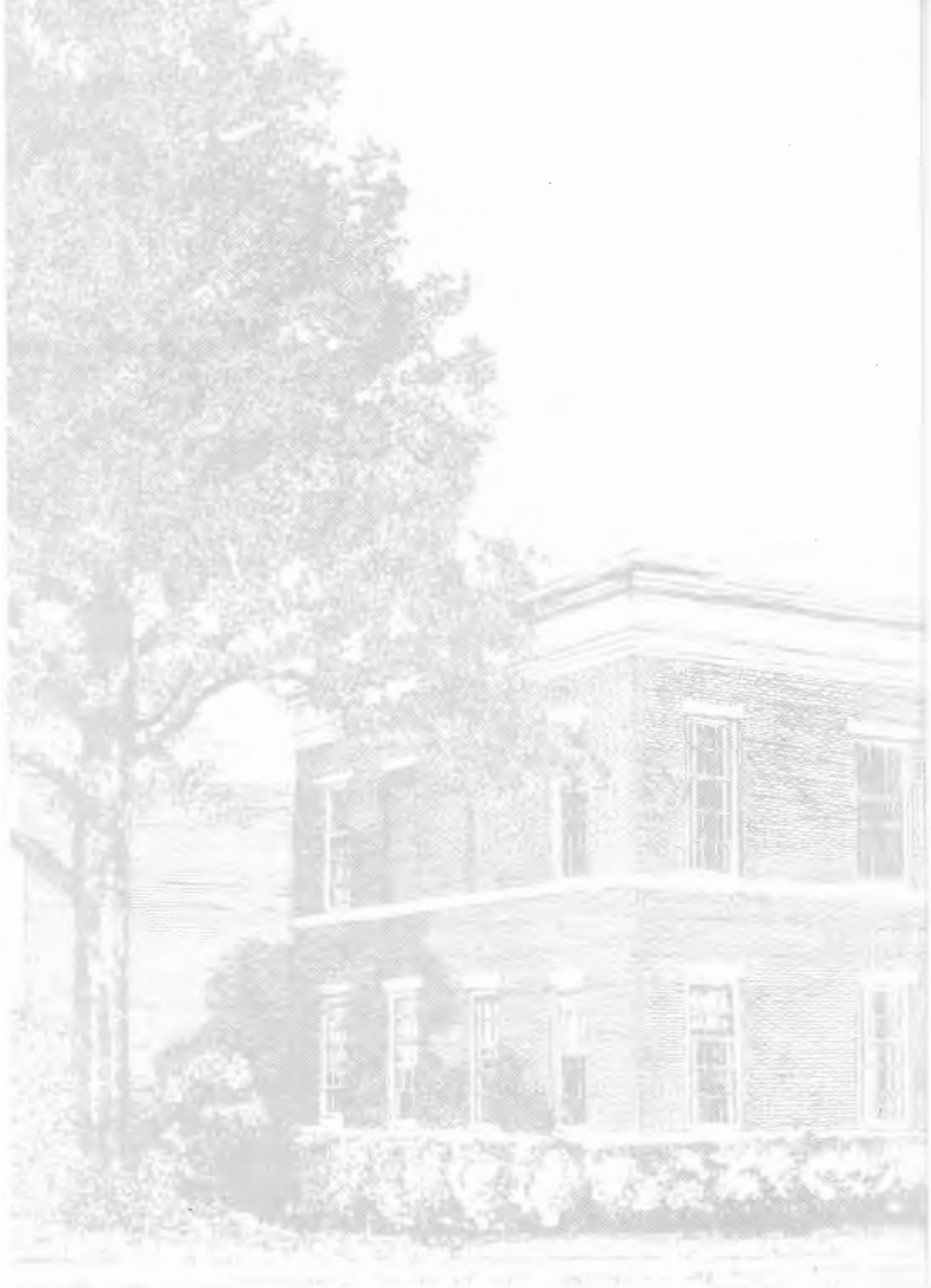
*Sibley Lecture - "The Concept and the Rule of Law"*

**Jeremy Waldron**
*University Professor,*
*New York University School of Law*

*There will be a reception immediately following the lecture in the Rotunda.*

The Sibley Lecture Series, established in 1964 by the Charles Loridans Foundation of Atlanta in tribute to the late John A. Sibley, is designed to attract outstanding legal scholars of national prominence to Georgia Law. Sibley was a 1911 graduate of the law school.



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Sibley Lecture, Univ. of Georgia Law School March 5, 2008

# The Concept and the Rule of Law

Jeremy Waldron

**I. Introduction: the importance of the Rule of Law**

Pakistan – Russia – Guantanamo – Florida

**II. The Rule of Law**

(a) determinacy, certainty, and settlement
(b) process and procedural fairness

**III. The Rule of Law and the concept of law**

Do we need to understand law (and its distinctive dangers) before we can understand the ROL?

**IV. Casual positivism**

Modern positivist understanding of law = any well-organized system of centralized order using articulate rules, provided that élite participants can distinguish these rules from other norms and orders that may be circulating in the society.

Against casual positivism: natural lawyers: Cicero, Augustine, Aquinas
anti-absolutism: Fortescue, Locke
20th century: Pashukanis and Fuller

the way we use "democracy" e.g. no democracy without free and fair elections

**V. Essential features of a legal system**

(1) Courts
(2) General norms.
(3) Legislation.
(4) Systematicity
(5) Control of power.

Respect for persons as free and active intelligences with a life of their own to lead and a view of their own to present

**VI. From essence to ideal**

morally-laden definition of law ⇨ aspiration for improvement in each dimension & resisting downward pressure in each dimension

## VII. Disputes about what the law is

- Dworkin's examples: Riggs v Palmer 115 N.Y. 506 (1889); Tennessee Valley Authority v. Hill 437 U.S. 153 (1978); Sindell v. Abbott Laboratories 26 Cal.3d 588 (1980)

- current S.Ct. docket: Exxon Shipping — DC v Heller — Boumediene v. Bush

-- not disagreement about what to do, but disagreement
about what it is to abide by the law in deciding what to do.

## VIII. The tension in the Rule of Law

| | | | |
|---|---|---|---|
| Positivist conception of law<br>primary and secondary rules | | | Narrow conception of Rule of Law<br>clear rules, crisply administered<br>→ predictable environment |
| Richer conception of law<br>as in (V) above | ↔ | respect for<br>each person<br>as an active<br>intelligence | ↔ | Richer conception of ROL<br>coherent system of public norms;<br>argumentation and due process;<br>certainty ≠ the be-all and end-all |

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